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OFFICE OF PETITIONS

In re Application of
Richard Coale Willson et al.
Application No. 10/737,403
Filed: December 16, 2003
Attorney Docket No.: 015AUS/UH2229

DECISION ON PETITION

This is a decision on the renewed petition under 37 CFR 137(a)¹ and 37 CFR 1.137(b)², filed April 19, 2005, to revive the above-identified application.

The petition under 37 CFR 1.137(a) is **DISMISSED**.

¹A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by:

- (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;
- (2) the petition fee as set forth in § 1.17(l);
- (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and
- (4) any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (c) of this section.

²Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b).

A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application became abandoned on June 20, 2004, for failure to timely respond to the Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures ("Notice") mailed April 19, 2004 which set a two (2) month period for reply. Accordingly, a Notice of Abandonment was mailed January 6, 2005. A petition under 37 CFR 1.137(a) filed January 20, 2005 was dismissed in a decision mailed February 25, 2005 because while petitioner asserted that the "Notice" was never received and thus that the delay in responding was unavoidable, petitioner did not provide corroborating evidence of non-receipt.

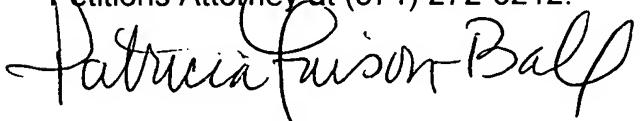
Comes now petitioner with the instant renewed petition under 37 CFR 1.137(a) and 1.137(b), claiming that the April 19, 2004 Notice was in fact received and that a reply was timely filed on June 18, 2004 by facsimile transmission.

The Petitioner has not however provided proof that the response was timely filed by facsimile transmission. The cover letter of the remarks includes what purports to be a certificate of mail. It is not clear if petitioner is relying on that piece of information as the basis for the claim that the response was timely filed or not but, if it is, that certificate of mail is defective and thus cannot serve as proof of filing. Note: *inter alia*, the fax number for the USPTO is incorrect and if the response was faxed to 713-872-9306, it would not have reached this agency.

The showing of record is still inadequate to establish unavoidable delay within the meaning of 37 CFR 1.137(a) and the petition under 37 CFR 1.137(a), will be dismissed. In view thereof, and in view of the authorization to charge deposit account no. 20-0336, this petition is also treated under 37 CFR 1.137(b). The deposit account will be charged in the amount of \$750.00 for the petition fee.

This matter is being referred back to the Office of Initial Patent Examination for further pre-examination processing in view of the amendments to the specification canceling all references to CDs, compact discs or sequence listings.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
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Office of Petitions